

| | | | |
|-------------------------------|------------------------|---------------------|--|
| Notice of Allowability | Application No. | Applicant(s) | |
| | 09/722,441 | HANKE ET AL. | |
| | Examiner | Art Unit | |
| | Kathleen M Kerr | 1652 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/26/03.
2. ☒ The allowed claim(s) is/are 2-16, 18-29, 61, 62 and 64-86.
3. ☒ The drawings filed on 22 June 2001 and 23 September 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.
5. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____ | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other _____ |

DETAILED ACTION

Application Status

1. In response to the previous Office action, a non-final rejection (mailed on May 27, 2003), Applicants filed a response and amendment received on August 26, 2003. Said amendment amended Claims 6, 8, and 67, cancelled Claims 17 and 63, and added new Claims 80-85. Thus, Claims 2-16, 18-29, 61-62, and 64-85 are pending in the instant Office action and will be examined herein.

Priority

2. As previously noted, a request for the benefit of priority for the U.S. Provisional Application Nos. 60/173,707, filed on December 30, 1999, and 60/184,130, filed on February 22, 2000, is acknowledged.

Drawings

3. As previously noted, the formal drawings filed on June 22, 2001 (Paper No. 5) and on September 23, 2002 (Paper No. 15) have been approved by the Draftsmen and are, therefore, entered as formal drawings acceptable for publication upon the identification of allowable subject matter.

Withdrawn - Claim Objections

4. Previous objection to Claims 8-9 under 37 C.F.R. § 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim is withdrawn by virtue of Applicant's arguments. The Examiner agrees that mutants can be used in Claim 6, thus, requiring particular activities in Claims 8-9 does effectively further limit the subject matter.

Art Unit: 1652

5. Previous objection to Claim 63 under 37 C.F.R. § 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim is withdrawn by virtue of Applicants' cancellation of said claim.

Withdrawn - Claim Rejections - 35 U.S.C. § 112, first paragraph

6. Previous rejection of Claims 8, 9 and 68-72 under 35 U.S.C. § 112, first paragraph, written description, is withdrawn by virtue of Applicant's amendment that requires specific activities, which are adequately described by function alone, in the host cells.

Withdrawn - Claim Rejections - 35 U.S.C. § 112, second paragraph

7. Previous rejection of Claims 6-15 and 67-72 under 35 U.S.C. § 112, second paragraph, as being indefinite is withdrawn by virtue of Applicant's amendment to Claims 6 and 67.

8. Previous rejection of Claims 8-9 and 68-72 under 35 U.S.C. § 112, second paragraph, as being indefinite is withdrawn by virtue of Applicants' amendment that clearly sets forth that the activity is required in the host cell used in the claims.

9. Previous rejection of Claims 68-72 under 35 U.S.C. § 112, second paragraph, as being indefinite is withdrawn by virtue of Applicants' amendment.

Art Unit: 1652

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with John Covert (and Paul Calvo) on November 3, 2003.

Amendments to the Claims

10. The claims have been amended as follows:

---6. A method for transforming a *Corynebacterium* species host cell comprising:

- (a) transforming a *Corynebacterium* species host cell with an isolated polynucleotide molecule comprising a nucleotide sequence encoding the polypeptide of SEQ ID NO:2 and
- (b) selecting a transformed host cell.---

(New)---86. The method of claim 6 wherein the nucleotide sequence is integrated into said host cell's chromosome.---

Art Unit: 1652

Conclusion

11. Claims 2-16, 18-29, 61, 62, and 64-86, as amended above and/or by Applicants, are allowed. Applicants must respond to the objections/rejections in each of the numbered sections in this Office action to be fully responsive in prosecution.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Kerr whose telephone number is (703) 305-1229. The examiner can normally be reached on Monday through Friday, from 8:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathupura Achutamurthy can be reached on (703) 308-3804. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



PONNATHAPUACHUTAMURTHY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1000

KMK
November 3, 2003